

# Reliable

**JOB SERVICE**  **SOURCE**

The **Reliable SOURCE** is published quarterly by The Miles City Job Service.

## Check Out Your Contractor “Before” You Hire Them

The Montana Department of Labor and Industry is reminding homeowners and businesses to use caution when choosing a contractor who may be looking to make a quick buck repairing damage done by recent floods. “As homeowners and businesses across the state start recovering from flooding, we want to make sure they have the information they need to hire the right contractor. Unfortunately in times of disaster unscrupulous companies see an opportunity to make fast money without doing the work,” said Labor Commissioner Keith Kelly. “If something sounds too good to be true, it usually is.”

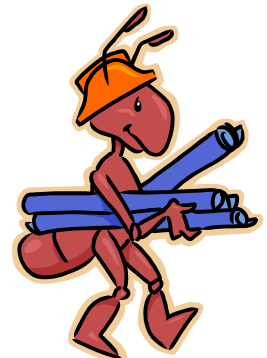
Warning signs to watch out for include:

- The contractor will only accept payment in cash
- Is pressuring you into making a hasty decision
- Requiring you to pay in full up front

Here are some tips that both homeowners and businesses can follow when choosing a contractor:

- Verify the contractor is registered with the State of Montana
- Check with the State Construction Contractor Registration Unit to be sure that the contractor is in compliance
- Find out if the contractor belongs to an industry association
- Check for proper insurance (Liability, Workers’ Compensation)
- Call references; look at past projects
- Have a contract detailing every aspect of the project including how and when paid
- Communicate. Assure each of you have a complete understanding of expectations
- Visually inspect each part of the project

***For more information on hiring the right contractor or to find a list of local contractors in your area log onto [www.mtcontractor.com](http://www.mtcontractor.com) or call 406-444-7734.***



## New Laws May Lower Premiums

*As usual, the Montana Legislature passed a number of bills that revise Montana's workers' compensation laws. Here is a brief summary of the more important changes.*

### What Passed

**House Bill (HB) 43**, sponsored by Representative Gary McLaren (R-Victor), was signed by the governor and went into effect on May 6, 2011. First of all, the new law broadens the categories of employees who may be tested under an employer's qualified drug-testing program. In addition to the employees who already may be legally tested, employers may now test individuals in positions affecting public health, jobs in which driving a motor vehicle is necessary for their work duties, positions that involve the instruction or supervision of minors, or jobs involving fiduciary responsibility for the employer.

The law makes it clear that employers can discipline employees for testing positive for marijuana or for the use of marijuana on the work site. It quite clearly states that an employee who is injured on the job is not entitled to workers' compensation benefits if his "medical use of marijuana . . . is the major contributing cause of the injury or occupational disease." Furthermore, the workers' compensation insurer will not be liable for any costs related either to the employee's use of medical marijuana or the consequences of that use.

The law confirms that employers may ban the medical use of marijuana, and a discharged employee may not file suit against an employer for wrongful discharge or discrimination as a result of his medical use of marijuana.

**HB 110**, sponsored by Representative Jeffery Welborn (R-Dillon), will go into effect July 1, 2011. The new law will punish insurers that use third-party agents to review medical bills. Insurers will be assessed a penalty if the agent fails to use the proper workers' compensation medical fee schedule.

The law also provides that an "insurer" that without good cause neglects or fails to pay undisputed medical bills

on an accepted liability claim within 60 days of receiving the bill may be assessed a penalty of not less than \$200 nor more than \$1,000 for each bill for which payment is delayed.

**HB 334**, sponsored by Representative Scott Reichner (R-Big Fork), went into effect in April and made a number of revisions to the Montana Workers' Compensation Act.

In an important change, the new law provides that an injury will not be considered compensable if the employee is "on a paid or unpaid break, is not at a work site of the employer, and is not performing any specific tasks for the employer during the break." Furthermore, employees who are engaged in "social or recreational activity, regardless of whether the employer pays for any portion of the activity," are not covered by workers compensation unless the employer actually requires or requests the employee to assume duties for the activity.

### What Was Vetoed

Montana employers are probably aware that the governor vetoed the portion of **HB 604** that would have assessed a fee of 2.75 percent on employers' workers' compensation premiums. The fee was to be added to the old fund account, which covers claims that arose before 1990. The governor also vetoed **HB 577**, which would have eliminated tips and gratuities from the definition of "wages" found in the Worker's Compensation Act.

### Practical Application

Legislators believe the reforms that have been enacted will result in a reduction of employers' workers' compensation premiums. The Montana State Compensation Fund has recently announced that it will lower premiums by 20 percent. \*

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## Other bills passed:



### Wage and hour law

**HB 84**, sponsored by Representative Carlie Boland (D-Great Falls), amends Montana's wage and hour laws to make it clear that they do not cover independent contractors. The new law takes effect October 1, 2011.



### Eight-hour-day laws

**HB 300**, sponsored by Representative Kelly Flynn (R-Townsend), amends some very old laws called the "eight hour-day laws." The new law provides that workers at mines, smelters, cement plants, and quarries may not work more than eight hours in a day unless the employer and the employee agree to such. The law, which imposes misdemeanor criminal penalties for violations, takes effect October 1, 2011.

*Continued...*

**Managers and Workers' Compensation**

**Senate Bill (SB) 287**, sponsored by Senator Jim Keane (D-Butte), requires that corporate officers and managers of limited liability construction companies that are overseen by a manager be covered by workers' compensation or obtain an independent contractor exemption certificate from the Montana Department of Labor and Industry (DOLI). The law takes effect July 1, 2011.

**Montana Human Rights Act**

**SB 290**, sponsored by Senator Ryan Zimke (R-Whitefish), is effective immediately. The new

law excludes independent contractors from the definition of "employee" under the Montana Human Rights Act. To be considered an independent contractor for purposes of the law, an individual must provide services under the terms of an independent contractor exemption certificate issued by the Montana DOLI.

**Unemployment Compensation**

**SB 342**, also sponsored by Senator Buttrey, sets out definitions for misconduct that would keep a discharged employee from receiving unemployment benefits. The new law takes effect October 1, 2011.

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## BUSINESS SERVICES TRAINING

Ron Nemec recently attended the Business Services Training in Helena on June 14 and 15, 2011. Business services works with the business customers in each Job Service area. The mission of business services, within Job Service, is to provide a valuable resource for our business customers and to provide technical services to employers in our communities and surrounding areas.

Some highlights of the session included Amy Smith from Wage and Hour. She covered the latest in Wage and Hour Laws, State of Montana Minimum Wage and Overtime Law, Wage Payment Act, Child Labor Law, and Prevailing Wage Law. Amy explained the difference between the Federal Minimum Wage and the State Minimum Wage and which wage Montana employers must follow. Also covered were the various methods of payment, how Wage and Hour factors the regular rate of pay per hour, and what a work-week consists of. Amy explained the required records to be kept by employers and the statute of limitations. She continued with the hours worked by an employee and what the employer has to pay and what they do not have to pay an employee (Example: an employer must pay an employee for time spent waiting for customers, and employer does not have to pay employees for break time). Employers do not have to give lunch breaks or breaks to employees in Montana. She discussed the general rule for travel time for an employee while working for an employer and explained compensatory time for public sector and private sector employers. She explained the exemption for employees for overtime who was eligible and which employees are not eligible to receive overtime from an employer. Also touched on, was a change that came out of the Legislature which lowered rates for Worker's Compensation.

An outreach panel which consisted of business service staff from different Job Services provided their best practices and how they conduct outreach to the employer community. Attorney Mark Cadwallader talked about Drug Testing Laws and Medical Marijuana Changes. Some of the changes to the original law were the number of people who can hold a Medical Marijuana Card. Medical Marijuana Cards can only be held by Montana residents. May 14, 2011 the new law went into effect. The second part of the new law will go into effect July 1, 2011. Mark also distributed information on Workforce Drug and Alcohol Testing Act.

Day two of the conference featured Marieke Beck and John Pavao from the Human Rights Bureau. Marieke discussed a number of cases that Human Rights dealt with this past year. John presented information on the American's with Disabilities Act (ADA) and Equal Employment Opportunity (EEO) and discussed what the essential functions of a job entailed. He also explained that in Montana if an employer has one employee they are subject to discrimination laws.

Kim Blunt.....Programs Manager  
Ron Nemec.....Business Advisor  
Mike Bissell.....  
Cindy Erickson.....Employment Consultant  
Noel Gruba.....Employment Consultant

Miles City Job Service Staff



The New Updated 2011 required Employer Posters are available for no charge at the Miles City Job Service. Employers may stop into our office to obtain their copy during our business hours 8:00am-5:00pm Monday through Friday excluding state holidays. If you would like to obtain a poster please contact Ron Nemec at (406) 232-8346.

## NEW 2011 Employment Poster

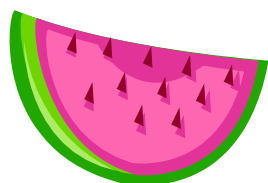
### *Miles City Job Service Workforce Center*

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*“An Eye For An Eye Only Ends Up  
Making The Whole World Blind.”*

*Mohandas Gandhi*

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